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11 *Attorneys for Defendants Tesla, Inc., Elon Musk,*
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And Linda Johnson Rice

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13 UNITED STATES DISTRICT COURT
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15 NORTHERN DISTRICT OF CALIFORNIA
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17 SAN FRANCISCO DIVISION

18 IN RE TESLA, INC. SECURITIES
19 LITIGATION

Case No. 3:18-cv-04865-EMC

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21 **DECLARATION OF NATHANIEL
SMITH IN SUPPORT OF
DEFENDANT'S ADMINISTRATIVE
MOTION TO SEAL**

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1 **I, Nathaniel Smith, declare as follows:**

2 1. I am a member of the bar of the District of Columbia and serve as Managing Counsel
3 for Defendant Tesla, Inc. I have been employed with Tesla since April 2021, and in the course of
4 my employment have become familiar with Tesla's treatment of its proprietary business
5 information, such as that described in this declaration. I have personal knowledge of the matters
6 described below and I am competent to testify thereto.

7 2. I make this declaration pursuant to the Northern District of California Civil Local
8 Rule 79-5(c), in support of Defendants' Administrative Motion To Seal ("Motion to Seal").

9 3. On January 11, 2022, Plaintiff Glen Littleton ("Lead Plaintiff"), filed a Partial
10 Motion for Summary Judgment ("MSJ") (ECF No. 352). Defendants have prepared an Opposition
11 to the MSJ, filed herewith, which contains certain confidential information and relies on certain
12 confidential exhibits and deposition testimony. Defendants submit the Motion to Seal, requesting
13 that the Court seal the confidential excerpts in the Opposition, and exhibits and deposition testimony
14 relied on.

15 4. On May 20, 2020, this Court entered a Protective Order (ECF No. 255), to which the
16 parties had agreed. The Protective Order provides for the protection of "Confidential" information,
17 described as "information (regardless of how it is generated, stored or maintained) or tangible things
18 that qualify for protection under Federal Rule of Civil Procedure 26(c) and other proprietary or
19 private information warranting special protection from public disclosure and from use for purposes
20 other than prosecuting this litigation." In accordance with the terms of the Protective Order, Tesla
21 designated certain produced documents and deposition testimony as "Confidential."

22 5. The Motion to Seal concerns such Confidential documents and deposition testimony
23 that reflect Tesla's sensitive, non-public communications regarding Elon Musk's August 7, 2018
24 bid to take Tesla private (the "Take Private Bid"), both among Tesla executives and directors, with
25 potential investors in the Take Private Bid, and with third party financial and legal advisors. It is
26 Tesla's practice to maintain all such non-public documents and communications strictly
27 confidential, therefore, it is my belief that all of these individuals had an expectation of the private
28 and confidential nature of their communications.

1 6. Specifically, Exhibits 81 and 94 are communications with Tesla's Board of
2 Directors. These non-public documents reflect the private information that was provided to Tesla's
3 directors, in relation to the Take Private Bid.

4 7. Exhibits 76, 105, 106, 109, F, G, and H are Tesla communications with a potential
5 investor in the Take Private Bid. That Tesla executives had been meeting with this potential investor
6 for years prior to the Take Private Bid is private, non-public information. Likewise, the
7 communications regarding this party's potential investment in Tesla, and the terms thereon, is
8 confidential, non-public, and commercially sensitive information.

9 8. Exhibits 255 and J are private communications between and among Elon Musk's
10 team of third-party financial and legal advisors regarding the planning and confidential strategy for
11 completing the Take Private Bid.

12 9. Exhibits 121 and 182 are text messages of Tesla executives, including Elon Musk,
13 which include both non-public Tesla business communications between and among Tesla
14 executives and directors, and private communications with third party investors regarding reactions
15 to, advice on, planning for, and funding of the Take Private Bid, as well as personal communications
16 unrelated to this litigation. The personal contact information of numerous private individuals is
17 contained throughout these exhibits.

18 10. Exhibit L are excerpts from the expert report of Plaintiff's expert, Michael
19 Hartzmark. Plaintiff has designated this report "Confidential" under the Protective Order.

20 11. The deposition excerpts of Messrs. Ahuja, Teller, and Musk provide testimony
21 discussing the above-described confidential exhibits, as well as additional information related to
22 logistics of the Take Private Bid, including potential funding sources therefor and private meetings
23 thereon.

24 a. In the deposition excerpts of Mr. Ahuja, he testified to details of a meeting with
25 potential investors in the Take Private Bid, and communications and
26 deliberations of Tesla' Board of Directors regarding the Take Private Bid.

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- b. In the deposition excerpts of Mr. Teller, he testified to the details of a several years of meetings between Tesla executives and a potential investor in the Take Private Bid and the private funding discussions that took place therein.
- c. In the deposition excerpts of Mr. Musk, he testified to the details of several years of meetings between with a potential investor in the Take Private Bid and the private funding discussions that took place therein, communications with third-party investors in Tesla regarding their private interest in and reactions to the Take Private Bid, internal Tesla communications and Board communications regarding the Take Private Bid, and private communications with financial and legal advisors regarding the structure of and funding for the Take Private Bid.

11 12. The revelation of Tesla's internal, non-public documents will cause harm to Tesla by
12 revealing financial, planning, personal, and commercial information that could be misconstrued for
13 improper purposes. Such a release of material, in a piecemeal way, risks that the information will
14 be discussed and spread without the proper context and undermine Tesla's ability to receive a fair
15 trial. This risk of misinformation spreading is heightened because Tesla is one of the most followed
16 companies globally and its CEO, Elon Musk, is one of the most followed individuals in the world.
17 In Tesla's view, sealing the materials for a brief period of time—until trial—balances the public's
18 right to access with Tesla's ability to preserve the sensitive and confidential nature of its
19 information.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct and that this document was executed in Washington, D.C.

22 DATED: February 1, 2022

By /s/ Nathaniel Smith
Nathaniel Smith

* * * *

1 I hereby attest that I obtained concurrence in the filing of this document from the other
2 signatory on this e-filed declaration.

3 DATED: February 1, 2022

4 QUINN EMANUEL URQUHART &
5 SULLIVAN, LLP

6 By /S/ Kyle K. Batter
7 Kyle K. Batter

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